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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/905,668	07/13/2001	David Nilson	XENOP002/PXE-005.US	4828
22434	7590	12/15/2005	EXAMINER	
BEYER WEAVER & THOMAS LLP			HENN, TIMOTHY J	
P.O. BOX 70250			ART UNIT	
OAKLAND, CA 94612-0250			PAPER NUMBER	

2612

DATE MAILED: 12/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/905,668	NILSON ET AL.	
	Examiner	Art Unit	
	Timothy J. Henn	2612	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) 29-32 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-15, 24-28 and 33-37 is/are allowed.
- 6) ☒ Claim(s) 16-19 and 21-23 is/are rejected.
- 7) ☒ Claim(s) 20 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 July 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date. _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Claims 29-32 withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 25 July 2005.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 16-19 and 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Striepeke et al. (US 5,672,881) in view of Stewart et al. (US 5,812,310).

[claim 16]

Regarding claim 16, Striepeke discloses an imaging apparatus used in capturing an image of a sample, the imaging apparatus comprising: an imaging box including an interior cavity for receiving the sample (Figure 1; c. 3, ll. 55-56); a stage for supporting the sample (Figure 1; Item 12); wherein the stage is capable of positioning the sample in a first direction (c. 4, ll. 41-44; c. 8, ll. 37-41). However, Striepeke does not specifically disclose linear actuators for moving the sample stage in first and second directions to cooperatively position the sample stage.

Stewart discloses a sample stage including linear actuators to position a sample in an X-Y reference plane with high accuracy (c. 2, ll. 23-27; c. 3, ll. 50-52). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include linear actuators in the sample stage of Striepeke to position the sample with high accuracy as taught by Stewart.

[claim 17]

Regarding claim 17, Striepeke discloses a light reception device (Figure 1, Item 2) and a light transmission device (Figure 1, Item 6), wherein the light transmission device is coupled to the imaging box and configured to transmit the light emitted from the sample to a fixed datum of the light reception device (Figure 1).

[claim 18]

Regarding claim 18, Striepeke discloses a light transmission device comprising a mirror that reflects light emitted from the sample towards the fixed datum (c. 8, ll. 25-30).

[claim 19]

Regarding claim 19, Striepeke discloses an apparatus wherein the fixed datum is a fixed axis perpendicular to a vertical wall of the imaging box (i.e. an axis going through lens 2 perpendicular to the rear wall).

[claim 21]

Regarding claim 21, Stewart discloses moving the sample stage in X (first direction and Y (second direction) directions which are orthogonal (c. 3, ll. 50-52).

[claim 22]

Regarding claim 22, Stewart discloses a first actuator providing vertical position (Y direction) and a second actuator providing horizontal position (X direction) for the stage (c. 3, ll. 50-52).

[claim 23]

Regarding claim 23, Striepeke discloses an imaging box comprising a camera mount adapted to receive a camera, the camera capable of capturing an image of the sample within the interior cavity (Figure 1).

Allowable Subject Matter

4. Claims 1-15, 24-28 and 33-37 are allowed.

[claims 1-15 and 33-37]

Regarding claims 1-15 the prior art does not teach or fairly suggest an imaging system including a camera mount configured to position a camera relative to a fixed datum and a light transmission device configured to rotate about the fixed datum wherein a transport mechanism and the light transmission device cooperate to direct light reflected or emitted from the sample to the fixed datum to capture an image by the camera as claimed.

[claims 24-28]

Regarding claims 24-28, the prior art does not teach or fairly suggest an imaging apparatus including a stage, a positioning arm rotatably coupled to the stage and rotatably coupled to the imaging box such that the stage remains substantially horizontal for any rotational position of the position arm and a mirror attached to the

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position arm wherein the mirror is configured to reflect light emitted from the sample at least partially along a fixed datum as claimed.

5. Claim 20 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

[claim 20]

Regarding claim 20, the prior art does not teach or suggest a light reception device which rotates about the fixed axis as claimed.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

i. Lundberg (US 6,963,375) teaches a camera with a mirror which is rotatable around the axis of the camera, but does not teach the use of a sample stage of any kind.

ii. Nieto Velasco et al. (US 6,642,953), Kobayashi (US 6,646,678), Cable et al. (US 6,775,567) and Nelson et al. (US 6,919,919) teach imaging systems including imaging boxes and cameras mounted to the imaging boxes but do not teach rotatably mounted mirror assemblies.

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7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy J. Henn whose telephone number is (571) 272-7310. The examiner can normally be reached on M-F 9:00 AM - 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ngoc Yen Vu can be reached on (571) 272-7320. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TJH
12/9/2005



NGOC-YEN VU
PRIMARY EXAMINER